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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of	)	IB Docket No. 96-111
Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	)	
and	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
and	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the INTELSAT K Satellite	)	File No. ISP-92-007

JOINT COMMENTS OF
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and L/Q LICENSEE, INC.

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August 21, 1997

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EXECUTIVE SUMMARY

Loral Space & Communications Ltd. ("Loral") and L/Q Licensee, Inc. (Globalstar™) applaud the Commission's continued efforts to promote a competitive satellite market in the U.S. through application of WTO principles. Loral and Globalstar™ strongly support the opening of telecommunications markets to competition and oppose any overly restrictive regulation.

The Commission should not retreat from its conclusion in DISCO I that U.S. licensed satellites may provide service to any country without further Commission authorization, as long as all requisite foreign approvals are obtained. Loral and Globalstar™ oppose the application of the ECO-Sat test to non-WTO route markets in a manner that would require further authorization by the Commission for U.S. satellite licensees before serving non-WTO countries.

The Commission must seek further comment to establish U.S. market entry policies for affiliates of intergovernmental satellite organizations ("IGO"). Examples of questions that should be considered in developing such market entry rules for IGO affiliates include:

- What level of ownership or investment by IGOs, IGO Signatories or IGO predecessors in an IGO affiliate will be deemed *per se* to create structural anti-competitive incentives to favor the IGO affiliate? Conversely, what level of ownership or investment (if any) by IGOs, IGO Signatories or IGO predecessorts would be deemed sufficiently *de minimus* to constitute a safe harbor?

- Which IGO assets (e.g., orbital slots, operational systems, personnel) and how many may be transferred to the IGO affiliate without unduly disadvantaging its competitors?

- What level of government financing, if any, would be deemed anticompetitive?

- What opportunities for cross-subsidization and non-arm's length transactions exist in the IGO affiliate context and what steps need to be taken to prevent cross-subsidies and non-arm's length transactions?

The WTO Basic Telecommunications Agreement ("WTO Agreement") does not address, nor should it benefit, IGOs or their affiliates since no single nation can realistically be deemed the home market of an IGO or an IGO affiliate.

Unless IGO affiliate market entry policies are established before IGO affiliates are allowed access to the U.S. market, such affiliates will distort the market by exploiting their unique relationship with IGOs and signatory investors. Ownership of an IGO affiliate by IGO signatories generally provides the affiliate with access to financing on preferential terms, allows IGOs to subsidize the development and expenses of the IGO affiliate, and enables the IGO to transfer some of its valuable resources such as scarce orbital slots, experienced personnel, and a valued customer base to its affiliate.

The Commission should not countenance any distinction between present and future IGO affiliates for market entry purposes. Because the Commission must apply the same standard for U.S. market entry to all IGO affiliates under the most

favored nation treatment of the WTO Agreement, and the Administrative Procedure Act, allowing a "current" IGO affiliate U.S. market entry will greatly impact the entry of all "future" IGO affiliates. Furthermore, because the Comsat/ICO Procurement proceeding may affect any future decision on ICO's entry into the U.S. satellite service market, and because the record in the proceeding has become stale, the Commission should not issue any decision in that pending proceeding that prejudges any IGO affiliate market entry issues.

The Commission's policies on processing requests to access non-U.S. satellites must not favor one set of applicants or service providers. These procedures must also provide sufficient flexibility for the Commission to prevent market distortions which could arise as a result of allocation of limited spectrum resources or licensing conditions. Such equivalent treatment of U.S. and non-U.S. satellite systems is consistent with the United States' obligation to provide "national treatment" under the WTO Agreement.

Loral and Globalstar™ support the Commission's proposal to process requests to access non-U.S. satellite systems through earth station applications or letters of intent, within processing rounds which include U.S. satellite applicants. Given this framework, the Commission should clarify that it is "streamlining" the processing of requests to access non-U.S. satellites only in the context of deciding whether the ECO-Sat

test is necessary. In this proceeding, the Commission should adopt earth station licensing standards for all requests to access non-U.S. satellites, which provide definite standards for such applicants, as required by the Communications Act.

Loral and Globalstar™ agree with the Commission's proposal to require non-U.S. satellite systems providing service within the United States to comply with all applicable legal and technical rules and policies. The Commission should also ensure that the operating terms and conditions imposed upon U.S. and non-U.S. systems are also equivalent. For example:

- Non-U.S. satellite systems should be treated like U.S. systems in connection with payment of ancillary operating costs such as, relocation costs of terrestrial stations which may be imposed upon U.S. satellite licensees for 2 GHz MSS.

- The Commission should only authorize entry by systems that have been licensed by another administration, and such authorization should include implementation milestones.

- Regulatory fee levels for earth station authorizations should be evaluated in light of the WTO Agreement and market entry by non-U.S. satellite operators.

- The Commission can support continued licensing of subscriber terminals as well as the International Telecommunication Union ("ITU") Policy Forum's draft Memorandum of Understanding on GMPCS.

- The Commission should apply the same universal service obligations to U.S. and foreign satellite systems.

Although non-U.S. satellites should comply with U.S. rules and regulations, the Commission should establish a procedure that allows the applicant to identify the differences

between any U.S. requirements and those of the licensing authority. The Commission could then entertain waivers of those rules where the difference has no impact on competition or technical issues.

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JOINT COMMENTS OF
LORAL SPACE & COMMUNICATIONS LTD.
and L/Q LICENSEE, INC.

Pursuant to Section 1.415 of the Commission's Rules, Loral Space & Communications Ltd. ("Loral") and L/Q Licensee, Inc. ("Globalstar™") hereby submit their joint comments on the Commission's proposals in the Further Notice of Proposed Rulemaking, FCC 97-252 (released July 18, 1997) ("FNPRM"), to

establish a framework for allowing satellites licensed by other countries to provide service in the United States.

Loral and Globalstar™ have a broad range of satellite interests which would be affected by adoption of the Commission's proposals in the FNPRM. L/Q Licensee, Inc. is the licensee of the Globalstar™ low-earth orbiting Mobile Satellite Service ("MSS") above 1 GHz ("Big LEO") system,[1] and will provide voice, data, facsimile and other services in U.S. and global markets starting in 1998. Loral owns Loral SKYNET®, a leading domestic Fixed-Satellite Service ("FSS") operator. Loral has been licensed by the Commission to construct, launch and operate a Ka-band system, CyberStar™, that will provide world-wide broadband services.[2] Loral also owns Space Systems/Loral, one of the world's premier satellite manufacturing companies. Loral also has applications pending to provide domestic and international FSS from the extended Ku-band. In addition to these MSS and FSS

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1 See Loral/QUALCOMM Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995), affirmed, FCC 96-279 (released June 27, 1996). The authorization was granted to Loral/QUALCOMM Partnership, L.P., which is the parent corporation of Globalstar™, and was assigned to Globalstar™ pursuant to Commission approval in September 1995 (File No. 148-SAT-TC-95).

2 See *In the Matter of Loral Space & Communications Ltd. Application for Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, Order and Authorization, DA 97-974, File No. 109-Sat-P/LA-95 (Released May 9, 1997).

interests, Loral holds a 50% interest in R/L DBS Company, L.L.C., which is a Direct Broadcast Satellite permittee.

I. LORAL AND GLOBALSTAR™ SUPPORT THE COMMISSION'S CONTINUED EFFORTS TO PROMOTE A COMPETITIVE SATELLITE MARKET

Loral and Globalstar™ agree with the Commission that commitments made under the World Trade Organization Basic Telecommunications Agreement ("WTO Agreement") will open basic telecommunications markets to competition and fundamentally improve competition in satellite services.[3] Loral and Globalstar™ applaud the Commission's efforts to promote competition in telecommunications in the U.S. and around the world through implementation of the WTO Agreement.

Loral and Globalstar™ agree with the Commission's proposal to forgo an ECO-Sat analysis, and to establish a presumption that competition will be promoted by granting applications of WTO member country licensed satellite systems ("WTO Satellite Systems") to serve the United States market.[4] The WTO Agreement enables the Commission to forgo the application of an ECO-Sat analysis with respect to U.S. market access for WTO Satellite Systems to provide covered services within the U.S. or between the U.S. and other WTO members.[5] If the Commission

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3 FNPRM at ¶¶ 2, 13.

4 FNPRM at ¶ 13.

5 Id. at ¶ 13.

provides for entry on an equal footing with U.S. satellite systems, and eschews unnecessary regulation of both U.S. and foreign systems, the U.S. satellite industry will benefit from the increased access to foreign markets.

II. THE DISCO I CONCLUSION WAS CORRECT - U.S. LICENSEES SEEKING TO SERVE A NON-WTO COUNTRY SHOULD NOT BE SUBJECTED TO FURTHER REGULATION BY THE COMMISSION

The Commission should not retreat from its conclusion in DISCO I that U.S. licensed satellites may provide service to any country without further Commission authorization as long as all requisite foreign approvals are obtained.[6] The flexibility that this policy affords to U.S. licensed satellite operators will benefit U.S. companies and satellite competition worldwide. Loral and Globalstar™ thus oppose the application of the ECO-Sat test to non-WTO route markets in a manner that would require further authorization by the Commission for U.S. satellite licensees before serving non-WTO countries.

The obligation to provide national treatment,[7] which the U.S. government accepted by signing the WTO Agreement, does not require that U.S. licensed satellites be saddled with a less

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6 *In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellite and Separate International Satellite Systems*, Report and Order, 11 FCC Rcd 2429, 2440 (1996) ("DISCO I").

7 National treatment is a nondiscrimination rule that requires a WTO member to treat companies from other WTO members as it treats its own companies.

flexible regulatory regime than the one adopted before the WTO Agreement in DISCO I. Instead, the national treatment obligation can and should be satisfied by allowing all WTO Satellite Systems to serve non-WTO route markets without additional authorization by the Commission. The alternative, singling out non-WTO route markets for special, more intensive regulatory treatment, will only encourage non-WTO licensing administrations to conclude that grant of landing rights is a "trade" issue, to the detriment of U.S. licensees seeking access to foreign markets.

The Commission recognized that some flexibility with respect to the application of the ECO-Sat test to non-WTO route markets may be required.[8] As a general matter, the Commission should tailor its policies to adopt the least regulatory means necessary to address a particular concern. Requiring U.S. licensees to obtain further FCC authorization results in additional costs for regulatory compliance, delay while the application is being processed, and unnecessary work for the Commission staff. When the appropriate supplementary FCC authority is finally obtained, nothing that the Commission will have done will ensure that the U.S. licensee obtains access to the foreign market. The only effects of this additional

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8 FNPRM at ¶¶ 26-28; *In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Notice of Proposed Rulemaking, 11 FCC Rcd 18178, at ¶ 70. (1996) ("DISCO II").

regulatory step would be to delay a licensee that seeks to enter a foreign market.

The Commission's competitive concerns regarding non-WTO route markets served by WTO Satellite Systems can be adequately addressed by prohibiting non-U.S. licensed satellites from entering into exclusive arrangements with any countries in which they wish to operate. By conditioning access to the U.S. market on a continuing commitment against entering into exclusive arrangements, non-WTO administrations will have an incentive to open their own markets to U.S. satellite systems.

III. THE COMMISSION MUST PROMPTLY INITIATE A RULEMAKING TO ESTABLISH IGO AFFILIATE MARKET ENTRY POLICIES

While the WTO Agreement resolves many of the structural issues which have precluded competition in international communications, the competitive issues relating to intergovernmental satellite organizations[9] ("IGO") and their affiliates have not been resolved. The WTO Agreement does not address nor does it benefit intergovernmental satellite organizations such as INTELSAT and Inmarsat, since no single nation can realistically be deemed the home market of an IGO.[10] For the same reason, the WTO Agreement should not automatically benefit IGO affiliates. As the Commission has recognized, "the treaty-based heritage of and possible government ownership in

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9 These entities are also known by the acronym ("ISO").

10 FNPRM at ¶¶ 31, 32.

these affiliates could result in privileged or exclusive access to national markets around the world and thereby diminish effective competition in the U.S. market."[11] A United States General Accounting Office report on the competitive impact of restructuring IGOs raises and explores these concerns.[12] While Loral and Globalstar™ support measures designed to promote competition in satellite services, the unique position of IGO affiliates requires scrutiny to ensure that IGO affiliates do not gain market access with unfair competitive advantages.

A. IGO Affiliates May Enjoy Anti-Competitive Market Advantages Over Other Competitors

The Commission has pointed out that the "unique relationship between intergovernmental satellite organizations and their affiliates provides an opportunity for behavior that could pose a very high risk to competition in satellite services to, from and within the United States."[13] The GAO agrees and found that IGOs and their signatories "have both the incentives and the ability to provide ICO [an IGO affiliate] with market advantages over its potential competitors."[14] These advantages

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11 Id. at ¶ 34.

12 United States General Accounting Office, Report to the Chairman, Committee on Commerce, House of Representatives, *Telecommunications - Competitive Impact of Restructuring the International Satellite Organizations, GAO/RCED*-96-204 at 10 (July 1996) ("First GAO Report").

13 FNPRM at ¶ 35.

14 See First GAO Report at 10; United States General Accounting Office, Report to the Chairman, Committee on Commerce, House

include privileged access to member countries' markets, financial benefits, cross-subsidization, and transfer of valuable resources.[15]

IGO signatories, which own an overwhelming percentage of the shares of an IGO affiliate, "are typically the government authorities or dominant telecommunications providers that control or influence access to their domestic telecommunications market."[16] Because of their substantial investment in the IGO affiliate, they have the incentive to grant the affiliate privileged access to their markets, or provide spectrum on more favorable terms to the affiliate than to any competitors. These signatories also have the incentive to assist IGO affiliates in any standard setting or regulatory procedures.

Ownership of an IGO affiliate by IGO signatories may provide the affiliate with more readily available financing.[17] For example, because of the implicit government backing, an affiliate can obtain commercial financing much easier than a privately owned competitor. Furthermore, as the GAO found, "since the signatories are typically government agencies or

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of Representatives, *Telecommunications - Competitive Impact of Restructuring the International Satellite Organizations, GAO/RCED-97-1 (Oct. 1996)* ("Second GAO Report"). First GAO Report at 10.

15 First GAO Report at 10; Second GAO Report at 30-31.

16 First GAO Report at 11.

17 First GAO Report at 12; Second GAO Report at 31.

government-sanctioned monopolies, they may have financial assets readily available for investment in the affiliate."[18]

Moreover, there is a danger that the customers of an IGO will subsidize the development and expenses of establishing the IGO affiliate. The IGO may also transfer some of its valuable resources such as scarce orbital slots, experienced personnel, and a valued customer base to its IGO affiliate, resulting in the affiliate having an unfair competitive advantage over its competitors.

Such anti-competitive practices have the potential to distort the market and to place private satellite operators at a significant disadvantage. Because of these inherent anti-competitive incentives in the IGO/IGO affiliate relationship, the United States preserved its ability to protect competition in the U.S. market, including the possibility of not granting access to a privileged IGO affiliate.[19] As the Commission pointed out, the Executive Branch and the U.S. Trade Representative are aware of the unique problems that IGO affiliates pose in this context, and have indicated that they will not permit access to any IGO affiliates that would likely lead to anti-competitive effects.[20]

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18 First GAO Report at 12.

19 FNPRM at ¶ 35; See *Letter from Charlene Barshefsky, U.S. Trade Representative-Delegate to Ken Gross, President and Chief Operating Officer, Columbia Communications* (Feb. 12, 1997).

20 Id. at ¶ 35.

B. WTO Agreement Implementation Can Proceed Without Delay While The Structure of IGO Affiliates and Their Potential For Anti-Competitive Conduct Is Reviewed And Addressed

Loral and Globalstar™ strongly support the Commission's conclusion that the affiliate's relationship to its IGO parent should be reviewed "to ensure that grant would not pose a significant risk to competition in the U.S. satellite market, and that the affiliate is structured to prevent such practices as collusive behavior, cross-subsidization, and denial of market access, and that the affiliate does not benefit directly or indirectly from IGO privileges and immunities."[21] The Commission has dealt with similar issues concerning cross-subsidization and the relationship between a monopoly provider and a "competitive affiliate" in the context of telephony[22] and the issues are no less important to the efficient functioning of the satellite services market. The issue of IGO affiliate entry into the U.S. is particularly important considering the upcoming privatization of Inmarsat, INTELSAT, and the creation of the INTELSAT spin-off, INTELSAT New Corporation ("INC"). The risks of allowing an IGO affiliate entry in the U.S. market without

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21 Id. at ¶ 36.

22 See, e.g. Communications Act of 1934 as amended by Telecommunications Act of 1996, § 272 (1996)("Communications Act"); In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 7 Comm. Reg. 768 (released April 18, 1997).

ensuring that the affiliate is completely separate and independent from its parent organization are enormous.

Only by comprehensively addressing the IGO affiliate issues and the potential opportunities for anti-competitive behavior can the Commission ensure that an IGO affiliate seeking U.S. market entry cannot take advantage of its treaty based heritage, significant IGO and signatory investments, and preferential access to orbital slots and spectrum to unfairly compete with WTO Satellite Systems. The Commission must develop rules for IGO affiliate entry into the U.S. market in order to ensure a level playing field for all satellite providers. Because IGO affiliates are unlike any other private company, and because their entry into the U.S. raises complex market issues, the Commission should seek further comment to develop the rules and standards under which an IGO affiliate may enter the U.S. market.

The affiliates and spin-off companies that are being created in the context of the privatization of the IGOs should not be permitted to occur in a vacuum. Instead, the Commission should develop specific policies for IGOs who contemplate forming or who have already formed affiliates or privatized entities on the conditions under which they may enter the U.S. market.

For example, this inquiry should examine questions including:

- What level of ownership or investment by IGOs, IGO Signatories or IGO predecessors in an IGO affiliate

will be deemed *per se* to create structural anti-competitive incentives to favor the IGO affiliate? Conversely, what level of ownership or investment (if any) by IGOs, IGO Signatories or IGO predecessorts would be deemed sufficiently *de minimus* to constitute a safe harbor?

- Which IGO assets (e.g., orbital slots, operational systems, personnel) and how many may be transferred to the IGO affiliate without unduly disadvantaging its competitors?

- What level of government financing, if any, of an IGO affiliate would be deemed anticompetitive?

- What opportunities for cross-subsidization and non-arm's length transactions exist in the IGO affiliate context and what steps need to be taken to prevent cross-subsidies and non-arm's length transactions?

It is important that the WTO implementation move forward swiftly. However, the Commission need not worry that considering the IGO affiliate market entry issues will delay this implementation. Loral and Globalstar™ note that the U.S. is under no obligation to implement rules for IGO affiliates by January 1, 1998 because IGOs and their affiliates are not entitled to benefit under the WTO Agreement. Instead, we urge the Commission to carefully examine the issues separately, preferably through a Further NPRM, in order to develop a full record on which to proceed.

The FNPRM is not consistent with DISCO II regarding the methods by which applications or letters of intent filed by existing IGO affiliates will be reviewed. In DISCO II, the Commission proposed to treat IGO affiliates "just like any other non-U.S. systems that seek access to the U.S. market [e.g.

subject to scrutiny under the ECO-Sat test], with the understanding that public interest factors are likely to play an unusually important role in making these determinations."[23] In the FNPRM, the Commission proposes "not to apply an ECO-Sat test to applications to use satellites of IGO affiliates if the affiliates are companies of WTO-members."[24] The Commission has not considered this issue on a fully developed record, and should revise its proposal in order to evaluate the impact of IGO affiliates on competition.

It is not clear when and under what standards the Commission proposes to deem an affiliate to be a "company of" a WTO member. For example, how would the Commission treat an IGO affiliate with significant IGO non-WTO member signatories, but which is registered in a WTO member country?

ICO Global Communications (Holdings) Limited ("ICO"), an IGO affiliate which will seek authorization to serve the U.S., is registered in several countries and by its own description "has no real national home."[25] ICO's largest shareholder is Inmarsat, and several of its other large shareholders are non-WTO

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23 DISCO II at ¶ 73.

24 FNPRM at ¶ 35.

25 ICO Global Communications Limited, Home Page, ICO Info (last modified Jan. 27, 1997) <http://www.i-co.co.uk/nonshock/aboutico.htm>.

members.[26] Therefore, its ownership structure raises competition-based concerns unlike a system licensed by a WTO member country with a WTO home market.

C. There is No Legal Or Policy Rationale For Making a Distinction Between "Existing" and "Future" IGO Affiliates

The FNPRM also draws an unwarranted distinction between "existing" IGO affiliates and "future" IGO affiliates.[27] The Commission seems to suggest that its proposal to evaluate the relationship between an IGO and its affiliate would apply to the use of satellites by "future" IGO affiliates. There is no principled ground on which the Commission could draw such a distinction.

As the Commission recognizes, the potential for anti-competitive effects is based on the structure of the IGO affiliate and its relationship to its predecessor at the time of application for entry into the U.S. and not on the date the IGO affiliate was created. Therefore the distinction between a "future" IGO affiliate and an "existing" one is irrelevant. The real test is whether the IGO affiliate's structure, investors and heritage enables it to engage in anti-competitive practices at the time of U.S. market entry.

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26 *ICO Global Communications Limited, 1996 Annual Report* (1996).

27 FNPRM at ¶¶ 34-36.

For example, ICO, a "current" IGO affiliate, is like an IGO, and unlike most private companies, because it is in large measure owned and controlled by its IGO predecessor, Inmarsat, as well as governments and signatories of Inmarsat. ICO benefits directly from its relationship with Inmarsat and its signatories, affording it, among other things, the ability to raise financing at rates not available to the private sector.

For example, ICO has been the beneficiary of a stable and proven asset base, a prized customer base, and a proven team of technologists, researchers, and operating capabilities that came directly from its Inmarsat heritage and Comsat association. As Inmarsat states "Inmarsat played a significant role in the formation of . . . ICO. . . . The company's [ICO's] 13-member board includes two Inmarsat members and the chief executive officer is former Inmarsat Director General Olof Lundberg."[28]

ICO has addressed issues of asset transfer and cross-subsidization by stating merely that "the Inmarsat Principles include an explicit prohibition on any cross-subsidization between Inmarsat and ICO . . . [and] ICO is a pro-competitive and entrepreneurial company, separate and independent from Inmarsat."[29] A record should be fully developed to assess the

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28 Inmarsat Home Page, Newsroom, Fact Sheets, Inmarsat and ICO (last modified January 1997) <http://www.inmarsat.org/inmarsat>.

29 *Letter from Cheryl A. Tritt, Stephen J. Kim, Ex Parte,* Comsat/ICO Procurement (April 3, 1996).

potential anti-competitive and distorting effects of any past and on-going Inmarsat/ICO cross-subsidization on the U.S. satellite market. Such a record must include the tracking and analysis of any transfers of capital, technology and human resources from Inmarsat to ICO.

By virtue of the significant ownership interest and voting share that IGO signatories have in ICO - at least 70%,[30] ICO indirectly enjoys numerous advantages over any other U.S. satellite competitor: the potential for privileged access to national markets, more favorable access to national spectrum because of national investment, ability to obtain financing at rates not available to the private sector, preferred access to guarantees of creditworthiness, and a higher level of influence over national standard setting and regulatory procedures than private organizations.

These issues and others have been discussed in the Comsat/ICO Procurement proceeding,[31] and it is not the intention

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30 *ICO Global Communications Limited, 1996 Annual Report* (1996); See *Application of Comsat Corporation*, Comsat/ICO Procurement at 18-19 (Non-signatory investment may reach only 30% of the voting shares of ICO. Signatory investment is at least 70% at all times); The First GAO Report states that "twenty percent ownership is considered an important upper limit to ensure that INTELSAT and its signatories have minimal influence on any new entities created." Signatory investment in ICO is substantially over the GAO's twenty percent guideline.

31 *Application of Comsat Corp. for Authority to Participate in the Procurement of Facilities of the ICO Global Communications Limited Systems*, File No. 106-SAT-MISC-95.,

of Loral and Globalstar™ to recreate the entire record in these comments. However, there is no doubt that ICO's treaty based heritage, and significant IGO and signatory investments give ICO an unfair competitive advantage. ICO must be treated like any other IGO affiliate, and a record must be developed to determine the impact on competition that ICO's entry and the entry of other IGO affiliates into the U.S. market would create.

D. The Commission Must Apply the Same Standard For U.S. Market Entry To All IGO Affiliates

The WTO Agreement's MFN status requires that the Commission not discriminate between WTO Satellite Systems. If the Commission granted ICO an authorization without special scrutiny on the grounds that it is an "existing" IGO affiliate, "future" IGO affiliates with similar structures would argue that they must be granted similar treatment. The standards which the Commission adopts with respect to ICO, and any other "existing" affiliates, will have a significant impact on all IGO affiliates, including the future affiliate of INTELSAT. The Administrative Procedure Act imposes a related requirement - that the Commission not arbitrarily discriminate between similarly situated entities.[32] Specifically, "a finding that an agency acted arbitrarily and capriciously by denying equal treatment to similarly situated

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Public Notice No. SPB-8 (May 10, 1995) ("Comsat/ICO Procurement").

32 See 5 U.S.C. § 706(2)(A) (reviewing court shall set aside agency action found to be "arbitrary, capricious," or otherwise unlawful).